

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5526 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDULA MUSABHAI PATEL

Versus

GSRTC SURAT DIVISION

Appearance:

MR HK RATHOD for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/11/98

ORAL JUDGEMENT

RULE.

Heard Mr H K Rathod, learned Advocate for the petitioner and Mr H S M Munsha, learned Advocate for the respondent No.1. The petitioner was working as a Bus Conductor with the respondent Corporation. He was visited with departmental enquiry on the allegation that he did not issue tickets to 27 passengers and recovered

the money. The charges were found to be proved and as such the competent authority imposed punishment to lower down 8 stages from the basic salary of Rs.1107/- to Rs.856/- with permanent effect from 29.11.91. The petitioner preferred appeal against the said order. The Appellate Authority, after issuing notice for the review of the penalty, enhanced punishment by substituting the penalty of dismissal from the service. The petitioner raised industrial disputes and as such the matter was referred to the Labour Court. The Presiding Officer, Labour Court set aside the order of the reviewing authority on 16.8.1995 inflicting the punishment of dismissal and substituted the penalty as follows:

(a) Restored the order dated 29.11.91 i.e. imposing the punishment to lower down 8 stages from the basic salary with permanent effect,

(b) Stoppage of two increments with cumulative effect.

2. It is contended by the learned Advocate for the petitioner that the Labour court has committed error in inflicting 3 penalties at a time. It is submitted that in addition to the above two penalties, the petitioner has also been deprived of the backwages. In my view, depriving the backwages cannot be considered as penalty. However, there is substance in the contention of Mr Rathod, learned Advocate for the petitioner that three penalties cannot be inflicted at a time. Mr H S Munshaw, learned Advocate for the respondent-Corporation submits that in view of the seriousness of the allegations coupled with misbehaviour of the petitioner with the officers of the Corporation, he has already been lightly dealt with by the Labour Court and as such no interference is called for by this Court.

3. I have considered the rival contentions. The Labour Court committed gross illegality in adding the penalty of stoppages of two increments with cumulative effect ignoring the legal position that two penalties cannot be imposed at a time. While setting aside the order of dismissal passed by the reviewing authority, ordinarily, the order passed by the competent authority could have been restored. Be that as it may, Mr Rathod submits that instead of lowering down the 8 stages from the basic salary, his client would accept penalty of stoppage of two increments with cumulative effect. The petitioner has been deprived of the backwages is also a mitigating circumstance.

4. In view of the aforesaid, this Special Civil Application is partly allowed and the award of the Labour Court, Surat dated 16.8.1995 is modified to the extent that the punishment of lowering down of 8 stages from the basic salary of Rs.1107/- to Rs.856/- with permanent effect is quashed and set aside. The respondent will undertake the fixation accordingly. The difference of salary if any, shall be paid to the petitioner within three months from today.

Rule made absolute to the aforesaid extent. No order as to costs.

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msp.